

PROCEDURE BEFORE THE BOARD

§ 102.48 Action of the Board upon expiration of time to file exceptions to the administrative law judge's decision; decisions by the Board; extraordinary postdecisional motions.

(a) In the event no timely or proper exceptions are filed as herein provided, the findings, conclusions, and recommendations of the administrative law judge as contained in his decision shall, pursuant to section 10(c) of the Act, automatically become the decision and order of the Board and become its findings, conclusions, and order, and all objections and exceptions thereto shall be deemed waived for all purposes.

(b) Upon the filing of timely and proper exceptions, and any cross-exceptions, or answering briefs, as provided in § 102.46, the Board may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before a member of the Board or other Board agent or agency, or may make other disposition of the case.

(c) Where exception is taken to a factual finding of the administrative law judge, the Board, in determining whether the finding is contrary to a preponderance of the evidence, may limit its consideration to such portions of the record as are specified in the exceptions, the supporting brief, and the answering brief.

(d)(1) A party to a proceeding before the Board may, because of extraordinary circumstances, move for reconsideration, rehearing, or reopening of the record after the Board decision or order. A motion for reconsideration shall state with particularity the material error claimed and with respect to any finding of material fact shall specify the page of the record relied on. A motion for rehearing shall specify the error alleged to require a hearing *de novo* and the prejudice to the movant alleged to result from such error. A motion to reopen the record shall state briefly the additional evidence sought to be adduced, why it was not presented previously, and that, if adduced and credited, it would require a different result. Only newly discovered evidence, evidence which has become available only since the close of the

hearing, or evidence which the Board believes should have been taken at the hearing will be taken at any further hearing.

(2) Any motion pursuant to this section shall be filed within 28 days, or such further period as the Board may allow, after the service of the Board's decision or order, except that a motion for leave to adduce additional evidence shall be filed promptly on discovery of such evidence. Copies of any request for an extension of time shall be served promptly on the other parties.

(3) The filing and pendency of a motion under this provision shall not operate to stay the effectiveness of the action of the Board unless so ordered. A motion for reconsideration or for rehearing need not be filed to exhaust administrative remedies.

[28 FR 7974, Aug. 6, 1963, as amended at 34 FR 14432, Sept. 16, 1969; 51 FR 23746, July 1, 1986; 56 FR 49143, Sept. 27, 1991]

§ 102.49 Modification or setting aside of order of Board before record filed in court; action thereafter.

Within the limitations of the provisions of section 10(c) of the Act, and § 102.48, until a transcript of the record in a case shall have been filed in a court, within the meaning of section 10 of the Act, the Board may at any time upon reasonable notice modify or set aside, in whole or in part, any findings of fact, conclusions of law, or order made or issued by it. Thereafter, the Board may proceed pursuant to § 102.50, insofar as applicable.

§ 102.50 Hearings before Board or member thereof.

Whenever the Board deems it necessary in order to effectuate the purpose of the act or to avoid unnecessary costs or delay, it may, at any time after a complaint has issued pursuant to § 102.15 or § 102.33, order that such complaint and any proceeding which may have been instituted with respect thereto be transferred to and continued before it or any member of the Board. The provisions of this subpart shall, insofar as applicable, govern proceedings before the Board or any member pursuant to this

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section, and the powers granted to administrative law judges in such provisions shall, for the purpose of this section, be reserved to and exercised by the Board or the member thereof who shall preside.

§ 102.51 Settlement or adjustment of issues.

At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have opportunity to submit to the regional director, with whom the charge was filed, for consideration facts, arguments, offers of settlement, or proposals of adjustment.

BACK-PAY PROCEEDINGS

§ 102.52 Compliance with Board order; notification of compliance determination.

After entry of a Board order directing remedial action, or the entry of a court judgment enforcing such order, the Regional Director shall seek compliance from all persons having obligations thereunder. The Regional Director shall make a compliance determination as appropriate and shall notify the parties of the compliance determination. A charging party adversely affected by a monetary, make-whole, reinstatement, or other compliance determination will be provided, on request, with a written statement of the basis for that determination.

[53 FR 37755, Sept. 28, 1988]

§ 102.53 Review by the General Counsel of compliance determination; appeal to the Board of the General Counsel's decision.

(a) The charging party may appeal such determination to the General Counsel in Washington, DC, within 14 days of the written statement of compliance determination provided as set forth in § 102.52. The appeal shall contain a complete statement setting forth the facts and reasons upon which it is based and shall identify with particularity the error claimed in the Regional Director's determination. The charging party shall serve a copy of the appeal on all other parties and on the Regional Director. The General Coun-

sel may for good cause shown extend the time for filing an appeal.

(b) The General Counsel may affirm or modify the determination of the Regional Director, or may take such other action deemed appropriate, stating the grounds for the decision.

(c) Within 14 days after service of the General Counsel's decision, the charging party may file a request for review of that decision with the Board in Washington, DC. The request for review shall contain a complete statement of the facts and reasons upon which it is based and shall identify with particularity the error claimed in the General Counsel's decision. A copy of the request for review shall be served on the General Counsel and on the Regional Director.

(d) The Board may affirm or modify the decision of the General Counsel, or make such other disposition of the matter as it deems appropriate. The denial of the request for review will constitute an affirmance of the decision of the General Counsel.

[53 FR 37755, Sept. 28, 1988]

§ 102.54 Initiation of formal compliance proceedings; issuance of compliance specification and notice of hearing.

(a) If it appears that controversy exists with respect to compliance with an order of the Board which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a compliance specification in the name of the Board. The specification shall contain or be accompanied by a notice of hearing before an administrative law judge at a place therein fixed and at a time not less than 21 days after the service of the specification.

(b) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or delay, the Regional Director may issue a compliance specification, with or without a notice of hearing, based on an outstanding complaint.

(c) Whenever the Regional Director deems it necessary in order to effectuate the purposes and policies of the Act or to avoid unnecessary costs or